



June 5, 2019

Via Certified Mail, Return Receipt Requested

Craigmont City Hall
Att'n Mayor, City Council,
109 E Main St.
Craigmont, Idaho 83523

**Re: Notice of Intent to Sue the City of Craigmont Over Violations of the
Clean Water Act at the City's Wastewater Treatment Plant**

Dear City Council and Mayor:

We write on behalf of our client, the Idaho Conservation League ("ICL"), to provide you with notice of ICL's intent to initiate a federal court lawsuit against the City of Craigmont to enforce provisions of the Federal Water Pollution Control Act ("Clean Water Act" or "CWA"), 33 U.S.C. § 1251 *et seq.* The City's wastewater treatment plant ("WWTP") is covered by National Pollutant Discharge Elimination System ("NPDES") Permit ID-002128-8 (the "Permit"). The Permit sets specific requirements that the City must follow to protect water quality in John Dobbs Creek and the Howard Gulch-Potlatch River Watershed. As set forth below, the City violated and continues to violate the effluent limitations and other requirements of the Permit in violation of the CWA, 33 U.S.C. §§ 1311(a) & 1342(a).

ICL sends this letter pursuant to Section 505 of the CWA, 33 U.S.C. § 1365, which requires providing notice 60 days before filing a citizen suit in federal court to enforce the CWA. Unless the City takes the steps necessary to remedy its ongoing CWA violations, ICL intends to file suit in U.S. District Court following the expiration of the 60-day notice period to seek injunctive relief and civil penalties for the violations enumerated below and for any additional similar violations identified subsequently.

Party Giving Notice; Representing Attorney

The full name, address, and telephone number of the party giving notice is:

Idaho Conservation League
Att'n: Austin Walkins
P.O. Box 844
Boise, ID 83701
208.345.6933
awalkings@idahoconservation.org

The attorneys representing ICL in this matter are:

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ICL's Commitment to Protecting Water Quality

Since 1973, the Idaho Conservation League has been Idaho's voice for clean water, clean air, and wilderness—values that are the foundation of Idaho's extraordinary quality of life. ICL works to protect these values through public education, outreach, advocacy, and policy development. As Idaho's largest state-based conservation organization, it represents more than 30,000 supporters, many of whom have a deep personal interest in protecting and restoring water quality throughout the rivers and streams of Idaho, including the Howard Gulch-Potlatch River Watershed, through Clean Water Act enforcement and other means. ICL has staff, members, and supporters who live, recreate, and/or work in and around the Howard Gulch-Potlatch River Watershed, including near and downstream of the pollution discharges from the City's WWTP. ICL staff, members, and supporters frequently visit, recreate, and engage in activities in this area and in areas downstream which are impacted by the City's pollution discharges.

The City's NPDES Permit

The City was issued NPDES Permit No. ID-002128-8, effective 4/01/2005, by the U.S. Environmental Protection Agency ("EPA"). The permit expired on 03/31/2010 but was administratively continued by EPA. Among other requirements, the Permit places effluent limitations and monitoring requirements on the City's discharges from the WWTP to John Dobbs Creek. Specifically, the Permit sets effluent limitations and/or monitoring requirements for eleven parameters, including: flow; biochemical oxygen demand ("BOD"); total suspended solids ("TSS"); *E. coli* bacteria; chlorine; pH; and ammonia. *NPDES Permit No.: ID-002128-8, Table 1.*

For BOD, the Permit includes average monthly limits of 30 mg/L and 30 lbs/day, and average weekly limits of 45 mg/L and 45 lbs/day. *Id.* The Permit also requires the average monthly removal of a minimum of 85% of BOD. *Id.* at I.A.4. For total residual chlorine, the Permit includes average monthly limits of 0.007 mg/L and 0.007 lbs/day and a daily maximum of 0.018 mg/l and 0.018 lbs/day. *Id.* at Table 1. For *E. coli*, the Permit includes an average monthly limit of 126 colonies/100 mL, and an instantaneous maximum limit of 406 colonies/100 mL. *Id.* For TSS, the Permit includes average monthly limits of 45 mg/L and 45 lbs/day, and average weekly limits of 65 mg/L and 65 lbs/day. *Id.* The Permit also requires the average monthly removal of a minimum of 65% of TSS. *Id.* at I.A.4. For pH, the Permit requires the pH range to be between 6.5 – 9.0 standard units. *Id.* at I.A.2.

Permit Table 1 sets forth effluent monitoring requirements, including sample location, frequency, and type. The City must submit Discharge Monitoring Reports (“DMRs”) to EPA, stating the results of the monitoring requirements set forth in the Permit. *Id.* at II.B. DMRs must be submitted monthly, postmarked by the 15th of the following month. *Id.*

The City’s CWA Violations for Exceeding Permit Effluent Limits

ICL intends to file suit against the City of Craignmont for its past and ongoing discharges of pollutants from the WWTP in excess of the limits authorized by the Permit. The CWA prohibits “the discharge of any pollutant by any person” from a point source into a navigable water unless authorized by an NPDES permit. 33 U.S.C. §§ 1311(a) & 1342(a). “Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action.” 40 C.F.R. § 122.41(a). Violations of permit effluent limits are enforceable through the CWA’s citizen suit provision. 33 U.S.C. § 1365(a) & (f).

Based on the information available from EPA’s ECHO website (www.echo.epa.gov; accessed May 15, 2019), the City violated and continues to violate the Permit’s effluent limitations for BOD, TSS, *E. coli*, chlorine, and pH. The Table below was prepared using information available on ECHO. Each row in the Table corresponds to one month’s reporting and lists the number of effluent limit exceedances by parameter. A review of the City’s DMRs might show additional exceedances.

The Table identifies 36 *instances* over the last five years in which at least one exceedance of the Permit limit occurred for a parameter during the month, representing *at least 36 CWA violations*. However, each *daily* exceedance of an effluent limit constitutes a separate CWA violation. *See* 33 U.S.C. § 1319(d). For example, when a permittee exceeds a monthly or weekly average effluent limit, the permittee is deemed to be in violation of the effluent limit each day of the month or week in which the exceedance occurred. *See, e.g., Sierra Club v. City & Cnty. of Honolulu*, CV No. 04-00463 DAE-BMK, 2007 WL 3166771, *6–*9 (D. Haw. Oct. 30, 2007); *U.S. v. Smithfield Foods*, 191 F.3d 516, 527 (4th Cir. 1999). Therefore, many of these 36 instances identified in the Table represent *more than one* CWA violation. Accounting for the City’s exceedances of monthly effluent limits in the ECHO data, ICL calculates at least 723 total days of exceedances, representing at least 723 *CWA violations*.¹

In the lawsuit, ICL intends to include each and every daily violation represented by the 43 instances of exceedances identified in the Table (at least 723 violations) and any similar additional effluent limit violations that occur hereafter through the resolution of this matter. The City’s DMRs and other documents in the City’s and EPA’s possession, which ICL intends to obtain if this matter is not resolved, include information bearing on the total number of Permit violations that occurred over the last five years and that continue to occur.

¹ Furthermore, when a permittee exceeds a daily effluent limit based on two or more samples in a row, the permittee has violated the CWA on each day of sampling and may have also violated the CWA on each day in between sampling. ICL intends to prove these days of violations in addition to the 723 violations already described.

Table: Summary of effluent limitation exceedances by the City of Craigmont's WWTP from June 2014 through May 2019.

Summary of Significant violation exceedances by the City of Craigmont's WWTP from June 2014 through May 2019.

City of Craigmont		Number of Exceedances Reported by Parameter										
		TSS			E. coli		BOD		Chlorine		pH	
Start	End	Wkly. Avg	Mo. Avg	% Rem.	Inst. Max	Wkly. Avg.	Mo. Avg	% Rem.	Daily Max	Inst. Min	Inst. Max	
2/1/2015	2/28/2015							1				
3/1/2015	3/31/2015							1				
7/1/2015	7/31/2015	1	1					1				
12/1/2015	12/31/2015							1				
2/1/2016	2/29/2016							1				
4/1/2016	4/30/2016							1				
2/1/2017	2/28/2017				1	2	2	1	1			
3/1/2017	3/31/2017			1				1	1			
4/1/2017	4/30/2017							1			1	
5/1/2017	5/31/2017						1	1	1			
6/1/2017	6/30/2017									1		
7/1/2017	7/31/2017									1		
9/1/2017	9/30/2017			1				1		1		
10/1/2017	10/31/2017							1				
1/1/2018	1/31/2018							1				
2/1/2018	2/28/2018							1				
3/1/2018	3/31/2018								1			
4/1/2018	4/30/2018								1			
5/1/2018	5/31/2018							1				
6/1/2018	6/30/2018											
Total Exceedances		1	1	2	1	2	4	16	5	2	1	
Total Days with exceedances		7	31	61	1	14	118	482	5	2	2	
Total											36	
											723	

The City's Other CWA Violations

The City of Craigmont also violated and continues to violate its Permit and the CWA by failing to comply with its Permit Schedule, the Permit's monitoring and reporting requirements, the duty to properly operate and maintain the WWTP, and possibly other procedural violations. See 33 U.S.C. §§ 1311(a) & 1342(a); 40 C.F.R. § 122.41(a) & (e). ECHO shows the City failed to complete required Permit Schedule events, failed to report that failure, and failed to submit required DMR measurements. Documents in the City's and EPA's possession, which ICL intends to obtain if this matter is not resolved, are expected to more fully document these and other similar failures to properly monitor, report, operate, and maintain the WWTP over the last five years and continuing into the future. ICL intends to prove any and all of these CWA violations in this lawsuit.

ICL's Intent to File Suit Seeking Penalties, Injunctive Relief, and Fees

ICL intends to file suit against the City of Craigmont 60 days from the date of this notice in Federal District Court under the CWA's citizen suit enforcement provision, 33 U.S.C. § 1365, if the City has not yet taken appropriate remedial action to halt these ongoing CWA violations and limit its pollution discharges to John Dobbs Creek and the Howard Gulch-Potlatch River Watershed. The court may award—and ICL intends to seek—injunctive relief as well as statutory penalties. 33 U.S.C. §§ 1319(d), 1365(a) & (b). The court may also award—and ICL intends to seek—reasonable attorney fees and litigation costs ICL incurs in successfully prosecuting this action. 33 U.S.C. § 1365(d).

Section 309 of the CWA, 33 U.S.C. § 1319(d) (adjusted by 40 C.F.R. § 19.4 and 84 Fed. Reg. 2056 (Feb. 6, 2019)), provides for the imposition of civil penalties of up to \$37,500 per violation per day that occurred prior to November 2, 2015, and up to \$54,833 per violation per day that occurred on November 2, 2015, and after. As shown in the Table, the City committed at least 723 separate CWA violations by exceeding its Permit effluent limits. Additionally, as explained in Footnote 1, each exceedance of a daily effluent limit in the Table may in fact represent more than one Permit violation, which ICL intends to prove in litigation. Furthermore, the City is subject to additional penalties for each of its reporting, monitoring, operating, and maintenance violations. ICL intends to pursue civil penalties for each and every one of the City's CWA violations identified herein and for any similar future violations that occur while this matter is underway.

One of the principal purposes of the CWA notice requirement is to allow the parties to discuss resolution of claims short of litigation. ICL sends this notice letter, in part, to encourage settlement negotiations which could avoid the need for litigation. During the 60-day notice period, ICL will be available to discuss alternative remedies and actions that might be taken to address the City's past violations and assure future compliance with the CWA. If you wish to discuss any aspect of this notice or settlement, please contact Austin Walkins at ICL or Bryan Hurlbutt at Advocates for the West (contact information above). Should the City have any facts, documents, or other information which you believe might bear upon the alleged violations set forth in this letter, please provide those to us now in order to avoid unnecessary litigation.

Respectfully,



Bryan Hurlbutt
Garrison Todd
ADVOCATES FOR THE WEST

Mark Ryan
RYAN & KUEHLER PLLC

Attorneys for Idaho Conservation League

CC Via Certified Mail, Return Receipt Requested:

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